

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1067 of 1999
with

Civil Application No. 2555 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHAIRMAN RAKESHKUMAR

RAMGOPAL PANDYA

Versus

DISTRICT CIVIL SUPPLIES OFFICE

Appearance:

MR MC BHATT for Petitioner

Mrs. Manisha Lavkumar AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. Rule. Mrs. Manisha Lavkumar, learned A.G.P. waives service of rule. Upon the request of the learned advocates for the parties, the matter is taken up for final hearing today.
2. In this petition under Article 226 of the Constitution of India, the petitioner has brought in challenge the order dated 3/6-7-1996, Annexure D to the

petition, passed by the District Civil Supplies Officer, Ahmedabad, which is confirmed in appeal by order dated 30.8.1996, Annexure E to the petition, passed by District Collector, Ahmedabad and again confirmed in revision by order dated 7.1.1999, Annexure F to the petition, recorded by Deputy Secretary, Government of Gujarat, Food, Civil Supplies and Consumers Department, Sachivalaya, Gandhinagar.

3. The facts of the case of the petitioner in nutshell are that the petitioner is a cooperative society running a fair-price shop. During the course of inspection, certain alleged discrepancies were noticed by respondent No.1 - District Supply Officer and hence he issued a show cause notice and an order was passed directing cancellation of authority and permit and also forfeiture of deposit which was challenged before respondent No.2 - District Collector by way of an appeal which was dismissed. The aforesaid order was challenged before the State Government by way of a revision and respondent No. 3 - Deputy Secretary exonerated the petitioner from all the charges levelled against him and the matter was remanded to respondent No.1 qua charge No.5 for verification of signature of the concerned officer by obtaining his statement and checking the official records. Thereafter respondent No.1 issued fresh notice levelling the same charges once again and passed order cancelling petitioner's authority and permit and forfeiture of deposits. The petitioner went in appeal against the said order which came to be dismissed. Against the dismissal of appeal, the petitioner approached the State Government by way of revision which also met with the same fate. Therefore, the petitioner has challenged the order of cancellation of authorization and forfeiture of deposit by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. The sole contention canvassed by learned advocate Mr. Bhatt for the petitioner before me is that while allowing previous revision, Deputy Secretary, respondent No.3 herein, had set aside the order passed by the District Civil Supplies Officer and District Collector and observed that none of the charges levelled by the District Civil Supplies Officer against the petitioner is proved. However, as far as discrepancy No.5 is concerned, by which the petitioner had lifted 10 quintals of wheat, it was necessary to verify from the record of the District Civil Supplies Officer as to who has signed the permit but it appears that necessary verification was not done. Therefore, he remanded the matter to inquire

into the aforesaid aspect after recording statement of the concerned officer.

5. Learned advocate Mr. Bhatt has further contended that inspite of the aforesaid order for examining the concerned officer, the District Civil Supplies Officer recorded the order of cancellation of authorization and forfeiture of deposit without examining the concerned Mamlatdar. He further contended that so far as the appellate authority is concerned, the appellate authority has recorded that the concerned Mamlatdar's presence could not be procured as he has retired and his whereabouts are not known. He recorded that no such permit was granted to lift 10 quintals of wheat and confirmed the order of the District Civil Supplies Officer.

6. In view of the aforesaid submission, he urged that all the authorities below have misdirected themselves against the observations made by the revisional authority in previous revision whereby the matter was remanded for recording the evidence of the Mamlatdar as to whether he had granted permit to lift 10 quintals of wheat or not and, therefore, the said orders at Annexures D, E and F are required to be quashed and set aside.

7. Learned A.G.P. Mrs. Manisha Lavkumar countered the aforesaid submission by inviting my attention to the reasoned orders recorded by the authorities below at Annexure D, E and F and contended that they are self-explanatory and hence no interference is warranted while exercising powers under Article 226 of the Constitution of India as this Court is not sitting in appeal against the said orders of the authorities below.

7. I have given my anxious considered thought to the rival contentions advanced by both the parties and I am of the opinion that while remanding the previous revision the District Civil Supplies Officer was directed to examine the concerned Mamlatdar and without examining him the District Civil Supplies Officer recorded the order of cancellation of authorization and forfeiture of deposit which is bad in law. The contention that the concerned Mamlatdar is retired and his whereabouts are not known is not a ground for not examining him as he is a retired government servant drawing pension and, therefore, the District Civil Supplies Officer ought to have examined him and thereafter recorded reasons for canceling authorization and forfeiting the deposit. In fact the District Civil Supplies Officer and the appellate

authority as well as revisional authority have misdirected themselves on the aforesaid aspect. When the matter was remanded on a limited issue and the method and manner in which the discrepancy was to be inquired into was clearly stated in the order passed in the previous revision the District Civil Supplies Officer ought to have adhered to it. Therefore, the matter is required to be remanded again to the District Civil Supplies Officer to decide in light of the order recorded by the Deputy Secretary in the previous revision whereby revisional authority had remanded the matter for the purpose of recording the statement of concerned Mamlatdar to prove discrepancy No.5 alleged against the petitioner by adhering to the observation made in the said order. In view of this, the matter is required to be remanded.

8. In this view of the matter, the petition succeeds in part and accordingly it is partly allowed. Orders at Annexure D, E and F to the petition are quashed and set aside and the matter is remanded to respondent No.1 District Civil Supplies Officer, Ahmedabad to decide the discrepancy No.5 as per the observation made by respondent No.3 - revisional authority i.e., Deputy Secretary in previous revision. Rule is made absolute to the aforesaid extent with no order as to costs.

9. In view of the above order, no order on civil application.

10. Direct service is permitted.

(karan)